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REMARKS:

This is in response to the final Office Action of Paper No. 9 dated December 11, 2003. At the time of the Office Action, Claims 1-18 and 32-40 were pending in the application. These claims remain pending, and Applicant has added new Claims 41-43. Reconsideration of the application and allowance or an advisory action are respectfully requested.

Telephone Interview with Examiner Cuff

The undersigned wishes to thank Examiner Michael Cuff for his courtesy and assistance in a telephone discussion that took place between Examiner Cuff and the undersigned on Friday, December 19, 2003. Though no agreement was reached regarding allowability of the claims during that discussion, the discussion helped the Applicant and the undersigned to clarify certain issues raised in the final Office Action.

The Claims Are Patentable Under 35 U.S.C. § 101

The Office Action maintains the rejection of Claims 1-18, 32-37 and 39-40 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. However, during the above-referenced telephone discussion between Examiner Cuff and the undersigned, the undersigned noted that State Street Bank & Trust Co. v. Signature Financial Group Inc., 149 F3d 1368, 1374-75, 47 USPQ2d 1596, 1602 (Fed. Cir. 1998) provides that, for a claim to be statutory under 35 U.S.C. § 101, the process must produce a “useful, concrete, tangible” result. The undersigned noted that as claimed, the present invention does in fact produce a useful, concrete, tangible result, and does not merely consist of a series of mental steps, as each of the independent claims

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requires the steps of manufacturing and distributing, which are physical, real world activities. In any case, for other reasons, the claim elements at issue (the steps of “determining” and “calculating”) which were allegedly mental steps, have been removed from the independent claims in favor of dependent claims.

For these reasons, it is respectfully requested that the pending claims, as amended, satisfy all of the requirements of 35 U.S.C. § 101.

Declaration Under 37 C.F.R. § 1.131

The Office Action states that the memorandum included with Applicant’s Declaration Under 37 C.F.R. § 1.131 does not establish conception prior to June 20, 2001 for all features recited in the claims. Specifically, in the first complete paragraph of paragraph 3 of the Office Action, the Office Action alleges that the steps of determining the number of copies to make based on pre-event attendee sales is not disclosed in the memorandum. The Office Action also states that certain other features of the current claims do not appear to be supported by the memorandum, namely, (1) the step of providing, *at a venue*, an opportunity to purchase; (2) recording occurring on-site *at the venue*; (3) distributing copies *before attendees exit the venue*; (4) providing an opportunity to purchase copies *during the event*; and (5) the use of a *global computer network*. As explained below, each of these elements has either been eliminated from the independent claims and/or is in fact supported by the memorandum.

With respect to the step of determining the number of copies to make based on the pre-event attendee sales, Applicant has amended independent Claims 1 and 13 by removing these

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steps and has instead placed them in dependent claims. Independent Claim 32 never required these steps.

With respect to the step of providing *at a venue* an opportunity to purchase, Applicant has amended independent Claim 32 so that this limitation is not required, and has instead added the limitation in a dependent claim. Independent Claims 1 and 13 never required this step.

With respect to the step of recording occurring on-site *at the venue*, Applicant cannot conceive of another practical way for this to occur other than on-site at the venue. In any case, Applicant directs the Examiner's attention to line 7 of the Abstract of the memorandum, which provides that "sound board recordings" would be used to manufacture copies of the performance. Sound board recordings are recordings that take place on-site at the venue where the performance occurs.

With respect to the step of distributing copies *before attendees exit the venue*, Applicant respectfully submits that this step is not recited in any of the independent claims.

With respect to the step of providing an opportunity to purchase copies *during the event*, Applicant respectfully submits that this step is not recited in any of the independent claims.

With respect to the use of a *global computer network*, it is respectfully submitted that this limitation is not recited in any of the independent claims. However, Applicant directs the Examiner's attention to item number 4 under the heading "Claims" in the memorandum, which states that copies may be distributed by digital download from the Internet, and also to line 4 of the section of the memorandum entitled "Detailed Description of the Preferred

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Embodiments”, which states that the consumer’s agreement to buy a copy of the performance may be done remotely through a web site.

In summary, Applicant respectfully submits that, as amended, the independent claims do not recite any limitations or steps that are not supported by the memorandum referenced in Applicant’s Declaration Under 37 C.F.R. § 1.131.

Claim Rejections Under 35 U.S.C. § 102 and 35 U.S.C. § 103

Because Applicant is relying upon its Declaration Under 37 C.F.R. § 1.131, Applicant respectfully submits that the rejections under § 102 and § 103 are moot. However, Applicant reserves the right to comment on these rejections, and the Stonedahl and Griner et al. patents cited in the Office Action at a later date, if necessary.

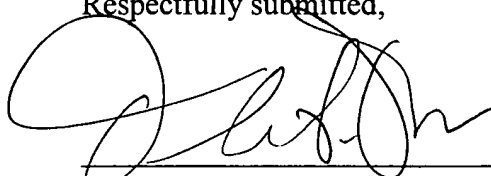
Conclusion

In light of the above, Applicant respectfully submits that the claims, as amended, are now in condition for allowance, and notification to that affect is earnestly solicited. In the event that the Examiner is not in a position to allow these claims after final, Applicant respectfully requests an informative Advisory Action so that further prosecution of this case

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would be facilitated after the filing of a Continued Prosecution Application. The Examiner is encouraged to contact the undersigned with any comments or questions at (314) 552-6331.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Polcyn', written over a horizontal line.

Thomas A. Polcyn
Reg. #41256
THOMPSON COBURN LLP
One US Bank Plaza
St. Louis, Missouri 63101
(314) 552-6331

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1. (currently amended) A method comprising the steps of:

providing, at a point-of-sale of tickets for a live performance event before said live performance event occurs, an opportunity for prospective event ticket purchasers to pre-purchase one or more copies of a recording of at least a portion of said live performance event;

conducting said live performance event;

recording at least a portion of said live performance event;

~~_____determining a number of copies of said recording pre-purchased at said point-of-sale of tickets for said live event;~~

~~_____calculating a desirable number of copies of said recording to be manufactured;~~

manufacturing a ~~said~~ desirable number of copies of said recording; and

distributing at least some of the manufactured copies of said recording to those that pre-purchased them.
2. (currently amended) The method of claim 1 wherein said live performance event comprises at least one of a live musical performance, a live choreographic performance, a live dramatic performance, a live oration and a live sporting event.
3. (currently amended) The method of claim 1 wherein said point-of-sale of tickets for said live performance event comprises at least one of a ticket box office that sells tickets for said live performance event, a telephone system adapted to permit a transaction over the telephone between a prospective event ticket purchaser and a remote prospective event ticket seller that sells tickets for said live performance event, a mail delivery system adapted to permit

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a transaction to take place by mail between a prospective event ticket purchaser and a remote prospective event ticket seller that sells tickets for said live performance event, and a user interface connected to a computer network and adapted to permit an electronic transaction to take place via said computer network between a remote prospective event ticket purchaser and a remote prospective event ticket seller that sells tickets for said live performance event.

4. (original) The method of claim 1 wherein said recording comprises at least one of an audio recording, a video recording and a transcript.

5. (original) The method of claim 1 wherein said copies comprise at least one of phonograph records, audio cassettes, compact discs, mini-discs, digital audio tapes, video cassettes, DVDs, downloadable digital files, electronic documents and printed documents.

6. (currently amended) The method of claim ~~4~~ 41 wherein the step of calculating a desirable number of copies of said recording to be manufactured includes calculating said desirable number of copies based on a function of the determined number of copies of said recording pre-purchased at said point-of-sale of tickets for said live performance event.

7. (currently amended) The method of claim ~~6~~ 1 wherein said desirable number of copies is at least as large as ~~a the determined~~ number of copies of said recording pre-purchased at said point-of-sale of tickets for said live performance event.

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8. (currently amended) The method of claim 1 wherein the step of providing an opportunity for purchasers to pre-purchase copies includes providing the purchasers with an option to pre-purchase one or more copies at the ticket box office that sells tickets for said live performance event before said live performance event occurs.

9. (currently amended) The method of claim 1 wherein the step of providing an opportunity for purchasers to pre-purchase copies includes providing a telephone system adapted to permit a transaction over the telephone between a prospective event ticket purchaser and a remote prospective event ticket seller that sells tickets for said live performance event before said live performance event occurs.

10. (currently amended) The method of claim 1 wherein the step of providing an opportunity for purchasers to pre-purchase copies includes providing a mail delivery system adapted to permit a transaction to take place by mail between a prospective event ticket purchaser and a remote prospective event ticket seller that sells tickets for said live performance event before said live performance event occurs.

11. (currently amended) The method of claim 1 wherein the step of providing an opportunity for purchasers to pre-purchase copies includes providing a user interface for a computer network adapted to permit an electronic transaction to take place via said computer network, before said live performance event occurs, between remote prospective event ticket

purchasers and a remote prospective event ticket seller that sells tickets for said live performance event before said live performance event occurs.

12. (currently amended) The method of claim 1 wherein the step of providing an opportunity for purchasers to pre-purchase copies of a recording of at least a portion of said live performance event requires the purchasers to purchase a ticket for said live performance event.

13. (currently amended) A method comprising the steps of:

- providing, at a point-of-sale of tickets for a live performance event before said live performance event occurs, an opportunity for prospective event ticket purchasers to purchase one or more copies of a recording of said live performance event before a specified cut-off date;
- conducting said live performance event;
- recording said live performance event;
- ~~_____determining a number of copies of said recording purchased before said specified cut-off date;~~
- ~~_____calculating a desirable number of copies of said recording to be manufactured based on a function of the determined number of copies of said recording purchased before said specified cut-off date;~~
- manufacturing a said desirable number of copies of said recording; and
- distributing at least some of the manufactured copies of said recording to those that purchased them before said specified cut-off date.

14. (currently amended) The method of claim 13 wherein the specified cut-off date occurs after the live performance event has occurred.

15. (currently amended) The method of claim 13 wherein said live performance event comprises at least one of a live musical performance, a live choreographic performance, a live dramatic performance, a live oration and a live sporting event.

16. (currently amended) The method of claim 13 wherein said point-of-sale of tickets for said live performance event comprises at least one of a ticket box office that sells tickets for said live performance event, a telephone system adapted to permit a transaction over the telephone between a prospective event ticket purchaser and a remote prospective event ticket seller that sells tickets for said live performance event, a mail delivery system adapted to permit a transaction to take place by mail between a prospective event ticket purchaser and a remote prospective event ticket seller that sells tickets for said live performance event, and a user interface connected to a computer network and adapted to permit an electronic transaction to take place via said computer network between a remote prospective event ticket purchaser and a remote prospective event ticket seller that sells tickets for said live performance event.

17. (original) The method of claim 13 wherein said copies comprise at least one of phonograph records, audio cassettes, compact discs, mini-discs, digital audio tapes, video cassettes, DVDs, downloadable digital files, electronic documents and printed documents.

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18. (original) The method of claim 13 wherein the step of providing an opportunity for purchasers to purchase one or more copies before a specified cut-off date includes giving the purchasers information regarding the price for each of said copies and the destination to which payment should be forwarded before said specified cut-off date.

19. canceled

20. canceled

21. canceled

22. canceled

23. canceled

24. canceled

25. canceled

26. canceled

27. canceled

28. canceled

29. canceled

30. canceled

31. canceled

32. (currently amended) A method comprising the steps of:

providing, at a point-of-sale of tickets for a live performance event ~~venue where a live event occurs~~, an opportunity for attendees of the live performance event to purchase one or more copies of a recording of said live performance event;

conducting said live performance event;

recording at least a portion of said live performance event;

manufacturing copies of said recording; and

distributing at least some of the copies of said recording to attendees of the live performance event that purchase them.

33. (original) The method of claim 32 wherein the step of manufacturing copies of said recording occurs on site at the venue.

34. (currently amended) The method of claim 33 wherein the step of distributing at least some of the copies of said recording to attendees of the live performance event that purchase them occurs before the purchasing attendees exit the venue.

35. (currently amended) The method of claim 32 wherein the step of providing an opportunity for attendees of the live performance event to purchase one or more copies of a recording of said live performance event is performed at least in part after the live performance event has started.

36. (currently amended) The method of claim 32 wherein the step of providing an opportunity for attendees of the live performance event to purchase one or more copies of a recording of said live performance event is performed at least in part after the live performance event is concluded.

37. (original) The method of claim 32 wherein the step of manufacturing copies of said recording includes copying said recording to compact discs, wherein each compact disc contains at least one copy of said recording.

38. (currently amended) The method of claim 32 wherein the step of manufacturing copies of said recording includes copying said recording to a computer, said computer being connected to a global computer network, and wherein the step of distributing copies of said recording includes distributing electronic copies by broadcasting the recording over the global computer network for post-event viewing by attendees of the live performance event that purchase a right to view said broadcast.

39. (currently amended) The method of claim 32 further comprising the steps of:
determining a number of copies of said recording purchased by attendees of the live performance event; and

calculating a desirable number of copies of said recording to be manufactured based on a function of the determined number of copies of said recording purchased by attendees of the live performance event;

wherein the step of manufacturing copies of said recording includes manufacturing said desirable number of copies.

40. (currently amended) The method of claim 32 wherein the step of manufacturing copies of said recording occurs on site at the venue, the step of distributing at least some of the copies of said recording to attendees of the live performance event that purchase them occurs before the purchasing attendees exit the venue, the step of providing an opportunity for attendees of the live performance event to purchase one or more copies of a recording of said live performance event is performed at least in part after the live performance event is concluded, and the step of manufacturing copies of said recording includes copying said recording to compact discs, wherein each compact disc contains at least one copy of said recording.

41. (new) The method of claim 1 further comprising the steps of:
determining a number of copies of said recording pre-purchased at said point-of-sale of tickets for said live performance event; and
calculating the desirable number of copies of said recording to be manufactured.

42. (new) The method of claim 13 further comprising the steps of:
determining a number of copies of said recording purchased before said specified cut-off date; and

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calculating the desirable number of copies of said recording to be manufactured based on a function of the determined number of copies of said recording purchased before said specified cut-off date.

43. (new) The method of claim 32 wherein said point-of-sale of tickets for the live performance event is located at the venue where the live performance is performed.